

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMUEL ELLIOTT,

Plaintiff,

v.

Civ. Case No. 2:21-cv-00226-MLG-GBW
Crim. Case No.: 14-cr-03822-MLG-GBW-1

UNITED STATES OF AMERICA,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDED DISPOSITION**

Magistrate Judge Gregory B. Wormuth filed the Proposed Findings and Recommended Disposition (“PFRD”) on April 9, 2024. Doc. 59. This PFRD recommends the Court deny Plaintiff Samuel Elliott’s Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, Doc. 1, and dismiss his civil case with prejudice.¹ Doc. 59 at 1, 27. Elliott raised three grounds for relief, all based on ineffective assistance of counsel, including: (1) defense counsel’s failure to review the evidence against him and advise Elliott as to the accuracy of the presentence reports and potential objections, Doc. 1 at 4; Doc. 2 at 1-7; (2) poor assistance of counsel during plea bargaining, Doc. 1 at 5; Doc. 2 at 7-9; and (3) defense counsel’s failure to correct two alleged errors in the Court’s awardance of restitution, Doc. 1 at 7; Doc. 2 at 10-13. The PFRD recommends denying each of Elliot’s arguments. Doc. 59 at 5-6; *id.* at 7-19 (addressing evidentiary review arguments); *id.* at 19-24 (analyzing plea arguments); *id.* at 25-26 (considering restitution arguments).

¹ Elliott also filed this motion in the related criminal case. See Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, *United States v. Elliott*, 2:14-cr-03822-MLG-GBW-1 (Mar. 12, 2021), ECF. No. 170.

The PFRD notified the parties of their ability to file objections within fourteen days and that failure to do so waived appellate review. *Id.* at 27. After twice extending Elliott's time to file objections to the PFRD, Elliott filed his objections on June 14, 2024. Docs. 61, 63, 64. The United States also sought an extension and then responded on July 31, 2024. Doc. 69.

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil Procedure 72(b), the Court has conducted a *de novo* review of the record and of the PFRD and considered the relevant objections. For the Court to reconsider Judge Wormuth's proposed findings and recommendations, Elliott must show that the PFRD "is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). The Court finds no reason either in law or fact to depart from Judge Wormuth's well-reasoned and extremely thorough PFRD and will adopt the conclusions memorialized therein in full. Doc. 59. The Court will enter a separate final judgment pursuant to Federal Rule of Civil Procedure 58.

It is therefore ordered as follows:

1. Elliott's objections to the Proposed Findings and Recommended Disposition, Doc. 64, are overruled.
2. Judge Wormuth's Proposed Findings and Recommended Disposition, Doc. 59, is adopted in full.
3. Elliott's motion to vacate under 28 U.S.C. § 2255, Doc. 1, is denied and this civil case is hereby dismissed with prejudice.
4. The same motion to vacate filed in Elliott's criminal case, *Elliott*, 2:14-cr-03822-MLG-GBW-1, ECF No. 170, is similarly denied. That criminal case will remain closed.



UNITED STATES DISTRICT JUDGE
MATTHEW L. GARCIA